

THE IOWA UNIFORM POWER OF ATTORNEY ACT

Executive Summary

Background of Uniform Act. In 2006, the National Conference of Commissioners on Uniform State Laws published the Uniform Power of Attorney Act (the “Uniform Act”), a comprehensive Act concerning the creation and use of financial powers of attorney. The Uniform Act includes guidance on all aspects of creating and using a financial power of attorney, including, but not limited to the technical aspects of how to create such a power of attorney, what duties are imposed on and what powers are granted an agent acting under a power of attorney. In addition, the Uniform Act makes clear that the agent owes a fiduciary duty to the principal and gives straightforward and clear guidance to the agent. The Uniform Act also provides remedies in case of abuse of authority by the agent and a simple form for use by individuals.

The Act is what is called a ‘default’ statute. The powers and authorities granted by the act can in most instances be changed by the actual power of attorney document signed by the principal.

Implementation in Iowa. The members of the Iowa State Bar Association (ISBA) Probate and Trust Law Section and Elder Law Section have been concerned about the pervasive abuse of powers of attorney, resulting in the fraudulent transfer of significant amounts of money from elderly and vulnerable individuals. The Iowa State Bar Association sees a need for a comprehensive and detailed Act to govern financial powers of attorney. Iowa currently has a very rudimentary power of attorney act, which is not nearly as comprehensive as the Uniform Act.

Accordingly, the ISBA Probate and Trust Law Section studied the Uniform Act, determined that it is legislation that covers all matters required to be covered by such an Act, and recommends the passage of the Uniform Act, with amendments made so the Act is in conformance with Iowa Law and Practice. The Act has also been reviewed by the The ISBA Elder Law Section has also reviewed the Act and recommends its passage.

The Iowa State Bar Association is not the only group in the state suggesting enactment of legislation regarding financial powers of attorney. Groups such as AARP, the Alzheimer’s Association and other advocacy groups for older Iowans are asking for legislation that will help curb abuse. In the 2013 legislative session, bills were introduced that would have affected powers of attorney in Iowa. It is the position of the Iowa State Bar Association that the Uniform Act will achieve the goals expressed by the above advocacy groups and others.

Reasons for Implementation in Iowa. There are several reasons why it is important to pass this legislation in Iowa, including:

- The need to provide clear, statutory guidance to agents acting under financial powers of attorney.

- The need to authorize certain individuals and entities the right to question in court the actions of an agent. Under current law, only the principal (the person signing the power of attorney, and who is likely incapacitated) and the principal's conservator (which most likely does not exist) have the right to bring an action in court. Under the Uniform Act, spouses, children and other individuals close to the principal can request the court's review of an agent's actions.
- The need to be specific about the powers of co-agents under the Act.
- The need to be specific about what powers a principal can give to the agent.
- The need for a statutory form of power of attorney to be used by individuals who may not have the financial means to hire an attorney to complete the power of attorney.